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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/606,536 | 06/26/2003 | Thomas Laudensch | Ruff 12 | 5723 |
| 23474 | 7590 | 08/24/2004 | EXAMINER | |
| FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1699 | | | GUTMAN, HILARY L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3612 | |
| DATE MAILED: 08/24/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,536

Applicant(s)

LAUDENBACH ET AL.

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,8-13 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,14-17,21 and 22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/30/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species C (Figure 3) in the reply filed on 7/26/04 is acknowledged.

2. Claims 2-3, 8-11, and 19-20 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/26/04.

Priority

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 116 (seen in Figure 2); 11c (Figure 3); and 11d (Figure 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numbers 23c and 23d (pages 8-10); numbers 13, 13c, and 26c (pages 9-12); numbers 13d, and 26a to 26d (page 10); and number 17 (page 12). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the release device and sensor or switch of claims 12-13; the release device being provided on the tailgate of claim 13; and the "form-closed manner" of claim 18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The disclosure is objected to because of the following informalities:

On page 1, [004], line 1, “according to claim 1” is inappropriate language for the specification and should be modified or deleted. At [005], line 2, “this takes place form-closed” is unclear.

On page 3, [012], line 3, “a” should be inserted before “movable”. Also at [014], line 2, “a” should be inserted before “positionally”. At [014], line 3, “a” should be inserted before “movable”.

On page 7, line 4, “15” should be “15a”. At [028], line 4, “20a” should be “28”. At [028], line 5, “28a” should be “28” and “31a” should be “31a”. On line 6, “32a” should

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apparently be "32". At [029], line 1, "28a" should be "28"; at line 2, "31a" should be "31"; and at line 2, "35a" should be "35". At [030], line 1, "34a" should be "34". At line 2, "31a" should be "31" and "34a" should be "34". On line 3, "32a" should be "32" and "38a" should be "28". On lines 5 and 7, "28a" should be "28".

On page 8, [033], lines 4-5, the statement that the longitudinal displaceability is provided by the operating means 23b is unclear as to how this task is accomplished.

On page 9, [037], line 7, "13c" should be "23c" for consistency in the specification.

On page 10, line 3, "24b" should be "24d". On line 5, "29b" should be "29d". On lines 6-7, "37d" should be "37". At [041], lines 3-4, the statement that the guide can be free is unclear. At [042], line 1, "guide 15d" should perhaps be "end rod 13d". On line 4, "the latter" should be "the end rod". At [043], line 3, "projection" should be "projections" and on line 5, "spring 34" should perhaps be "spring 34 and 34b-d".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 6-7, 14-17, and 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 6, line 1, recites “the form-closed holding” which is unclear and does not appear to have antecedent basis in the claim. Furthermore, “said form-closed holding action” on lines 3-4 is also unclear. Perhaps on lines 3-4, “a form-closed holding action” should be recited.

In claim 7, line 4, “said form-closed holding” is unclear as to what specifically the applicant intends to recite. Perhaps “action” should be inserted after “holding”.

In claim 14, lines 2-3, the cover is recited to be “held form-closed” in a holding position. This is unclear as to what specifically the term “form-closed” means and a look to the specification does not apparently aid in the understanding of this term.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Stiltner et al.

Stiltner et al. (6,030,019) disclose a locking device for a motor vehicle, the locking device having a projection 26 and a holding part 19 (Figure 3), the projection and the holding part being movable relative to one another with a relative movement and the projection 26 acting on the holding part, wherein for performing the relative movement operating means 32 are provided, the operating means having an electromotive drive 36 with a gear 34, 38.

With regard to claim 4, the gear has toothed wheels 34, 38, wherein the wheels are not axially parallel.

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With regard to claim 5, the gear is a worm gear 38.

With regard to claim 6, the projection 26 has a holding position (not shown) for a form-closed holding action of the holding part and a release position (Figure 3) for releasing the holding part, the form-closed holding action occurring in at least one direction.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 1, 6-7, 14-17, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ament et al. in view of Durrani et al. (6,290,281).

Ament et al. (6,402,217) disclose a locking device for a motor vehicle, the locking device having a projection 26 and a holding part, the projection and the holding part being movable

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relative to one another with a relative movement and the projection 26 acting on the holding part, wherein for performing the relative movement operating means are provided.

With regard to claim 6, the projection 26 has a holding position for a form-closed holding action of the holding part and a release position for releasing the holding part, the form-closed holding action occurring in at least one direction.

With regard to claim 7, there is a freedom of the relative movement of the projection relative to the holding part in two opposite directions and wherein spring means 19 are provided, wherein in one direction the movement takes place by the spring means.

For claim 14, the locking device is provided for a cover of a motor vehicle trunk, wherein the cover comprises the holding part and is held form-closed in a holding position by the projection.

With regard to claim 15, the cover with the holding part runs in a guide 43 and the projection engages in the guide.

With regard to claim 16, the projection is movable for bringing about engagement and for releasing the guide.

With regard to claim 17, there is a holding position of the cover, where the cover is under the action of a tension, the cover automatically being retracted on releasing the holding position (via the spring means 19).

With regard to claim 21, the cover is a flat article and has a rod 25 at one of its ends, the rod essentially covering the entire trunk width.

With regard to claim 22, the ends 26 of the rod form the holding parts and are retained by the projection.

Ament et al. lack the operating means having an electromotive drive with a gear. Ament et al. additionally, lack the freedom of the projection wherein in one direction for releasing the form-closed holding action the movement takes place electromotively through the operating means.

Durrani et al. teach a locking device 23 for a cover 25 of a motor vehicle comprising an operating means 83 having an electromotive drive 101 and a gear 103. In addition, the locking device has a projection 85 and a holding part 131 wherein the two are movable relative to one another with a relative movement. The projection 85 has a holding position (Figure 9) for a form-closed holding action of the holding part and a release position (Figure 8) for releasing the holding part, the form-closed holding action occurring in at least one direction. A freedom of the relative movement of the projection 85 relative to the holding part is provided in two opposite directions wherein, in one direction for releasing the form-closed holding action, the movement takes place electromotively through the operating means.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the operating means of Durrani et al. in place of the operating means of Ament et al. in order to allow the cover to be electromotively latched and release thereby aiding an operator of the locking device.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

17. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231


or faxed to:

(703) 872-9326, (for formal communications intended for entry)

or:

(703) 746-3515, (for informal or draft communications, please clearly label

"PROPOSED" or "DRAFT").


Hilary Gutman
August 20, 2004